

## **SUPPLEMENTAL ECONOMIC IMPACT ANALYSIS OF PROPOSED CRITICAL HABITAT FOR THE MOLOKA'I PLANTS**

### **1. INTRODUCTION**

In April 2002, the U.S. Fish and Wildlife Service (the Service) proposed designation of critical habitat under the Endangered Species Act of 1973, as amended (the Act) for the Moloka'i Plants (the Plants). This proposal encompassed approximately 43,516 acres of land on the island of Moloka'i in Hawai'i. Because the Act requires an economic analysis of the critical habitat designation, the Service released a "Draft Economic Impact Analysis of Proposed Critical Habitat for Threatened and Endangered Plants on Moloka'i" (hereafter the DEA) for public review and comment in August 2002. Subsequently, an Addendum to the DEA was prepared to update the DEA based on public comment and new information obtained after the DEA was published. The DEA and Addendum only addressed impacts to areas proposed for designation in the proposed rule.

The proposed designation did not include Kamakou Preserve, Pelekunu Preserve, and Mo'omomi Preserve because the Service found that the Plants and their habitats within these three preserves received long-term protection and management and therefore were not in need of additional special management considerations or protection. Therefore, as stated in the proposed rule for the Plants, the Service did not propose designation for these lands as critical habitat. (67 FR 16527).

This Supplemental Economic Impact Analysis being prepared at the request of the Service and consists of an analysis of the economic impact of critical habitat designation on Kamakou Preserve, Pelekunu Preserve, and Mo'omomi Preserve. Methodology for estimating impacts, scope of analysis, and timeframe of analysis (ten years) are identical to those used in the DEA and Addendum.

### **2. RELEVANT AREAS**

Kamakou Preserve, Pelekunu Preserve, and Mo'omomi Preserve comprise approximately 9,218 acres. The three preserves are each managed by The Nature Conservancy (TNC) as part of the Natural Area Partnership (NAP) program. Under the Natural Area Partnership (NAP) program, the State provides two-thirds of the management costs for private landowners who agree to protect permanently intact native ecosystems, essential habitat for threatened and endangered species, or areas with other significant biological resources.

Kamakou Preserve consists of approximately 2,633 acres in the mountainous interior of East Moloka'i near the summit of the island's highest mountain. Kamakou Preserve is host to 37 rare plant species, of which 18 are listed as federally endangered. Kamakou Preserve also provides habitat for native forest birds, native land snails, and countless native insects. The land is owned

by Moloka'i Ranch, which granted a conservation easement in 1982 to TNC to restore the area and protect it in perpetuity.

Pelekunu Preserve consists of approximately 5,661 acres on Moloka'i's rugged north coast. The Preserve provides protection to one of Hawai'i's last remaining free-flowing streams as well as to countless rare plant, bird, snail, and aquatic species. The land is owned by TNC, which purchased the land principally from Moloka'i Ranch in 1987.

Mo'omomi Preserve consists of approximately 925 acres on the northwest coast of Moloka'i. Mo'omomi Preserve protects one of the largest and best remaining dune ecosystems and shelters more rare coastal species than any other single place in the main Hawaiian Islands. Mo'omomi Preserve harbors more than 22 native Hawaiian plants species, is an important nesting site for the endangered green sea turtle, and hosts several bird species. In addition, Mo'omomi Preserve contains significant archaeological, paleontological, and cultural resources. Mo'omomi Preserve was created in 1988 on land purchased by TNC.

### **3. SECTION 7-RELATED COSTS**

#### **3.a. Anticipated Activities**

As discussed above, all three preserves were created for the protection of the unique resources within each preserve. Anticipated activities involve land management actions designed to preserve and protect the biological and cultural resources within the preserves and may include: (1) ungulate control; (2) alien species control and/or removal; (3) natural resources monitoring and research; (4) rare species protection, including outplanting and seed collection; (5) public outreach, including guided hikes; (6) fire prevention; and (7) fencing, if needed and with community input.

In addition, TNC has partnered with the State Department of Land and Natural Resources, the Service, the National Park Service and other agencies to form the East Moloka'i Watershed Partnership (EMWP) to ensure the protection of over 22,000 acres, including Kamakou Preserve. While costs associated with EMWP activities were estimated in the DEA, the estimate covered only activities in the proposed critical habitat designation and did not include possible EMWP activities within Kamakou Preserve.

#### **3.b. Federal Involvement**

As noted above, ongoing management activities are supported by funding from the State through the NAP program and from TNC. While there are no current plans to seek Federal funding to support activities within the three Preserves, it is possible that TNC may seek Federal funding from the Service, from the Natural Resources Conservation Service (NRCS), or from the Environmental Protection Agency (EPA) to support new or expanded projects in the future.

#### **3.c. Consultation Cost**

- Total Section 7 Costs: \$5,200 to \$78,500

The number of consultations over the next ten years will depend upon a number of factors: the need to implement or expand management projects; the capacity to implement or expand management projects; the desire to utilize Federal funding to implement or expand new management projects; the availability of Federal funding; and the number of qualified projects proposed. Considering these factors, this analysis estimates that between one and five consultations will occur over the next ten years. The above estimate is based on (1) one to five consultations in the next ten years, (2) Low to Medium cost (from Table VI-I of the DEA) of a consultation with a Federal agency as the applicant and/or with the involvement of a non-Federal applicant; and (3) no biological survey. No biological survey is anticipated because of the beneficial nature of the anticipated projects and because of the existing information compiled by the Hawai'i Natural Heritage Program and others regarding the biological resources in the area.

### **3.d. Project Modification Cost**

- Total Section 7 Costs: Minor

In general, conservation projects proposed by TNC in accordance with the established management plans are designed to preserve and protect the wildlife habitat within the existing preserves by preventing ungulates from entering biologically sensitive areas, reducing fire potential, controlling weeds and invasive species, etc. While the Service may recommend minor changes during the consultation process, these recommendations would generally enhance the success of the planned activity. Thus, no major project modifications are anticipated.

## **4. SECTION 7-RELATED BENEFITS**

As discussed in greater detail in the DEA, critical habitat designation is likely to provide economic benefits to the region, as well as to society as a whole. These benefits fall into two categories. Direct benefits are those directly attributable to the activities associated with compliance with the habitat designation, while indirect benefits arise from preservation of threatened and endangered species and other environmental improvements encouraged by critical habitat designation.

However, the development of quantitative estimates associated with the benefits of designating Kamakou Preserve, Pelekunu Preserve, and Mo'omomi Preserve as critical habitat is impeded by the scarcity of available studies and information relating to the size and value of beneficial changes that are likely to occur as a result of listing a species or designating critical habitat. In particular, the following information is not currently available: 1) quantified data on the value of the Moloka'i species; and 2) quantified data on the change in the quality of the ecosystem and the species as a result of the designation (for example, how many fewer ungulates will roam into the critical habitat, how many fewer invasive plants will be introduced as a result, and therefore how many more of the endangered plants will be present in the area). As a result, it is not possible, given

the information that is currently available, to estimate the value associated with ecosystem preservation that could be ascribed to critical habitat designation versus the existing planned conservation management.

As noted in the DEA, the economic analysis is not intended to provide a comprehensive analysis of the benefits that could result from section 7 of the Act in general, or of critical habitat designation in particular. In short, the Service believes that the benefits of critical habitat designation are best expressed in biological terms that can be weighed against the expected costs of the rulemaking.

## **5. IMPACT TO SMALL ENTITIES**

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

While SBREFA does not explicitly define either “substantial number” or “significant economic impact,” the U.S. Small Business Administration (SBA) and other Federal agencies have interpreted “substantial number” to mean 20 percent or more of the small entities in any industry, and “significant economic impact” to equal three percent or more of a business’s annual sales. Federal courts and Congress have indicated that an RFA/SBREFA analysis should be limited to direct and indirect impacts on entities subject to the requirements of the regulation (Service, 2002). As such, entities indirectly impacted by the moth listing and critical habitat, and therefore, not directly regulated by the listing or critical habitat designation, are not considered in this section of the analysis.

The following entities could be directly impacted by designation of Kamakou Preserve, Pelekunu Preserve and Mo‘omomi Preserve:

### **Federal:**

- Service (All projects, activities, land uses)
- NRCS (funding conservation activities)
- EPA (funding conservation activities)

### **State:**

- State Department of Land and Natural Resources (through oversight of NAP program)

**Nonprofit:**

- TNC (conservation activities)

The RFA/SBREFA considers “small entities” to include small governments, small organizations, and small businesses (5 U.S.C. §601). The following discussion examines each entity potentially impacted from the list above to determine whether it would be considered “small” under the RFA/SBREFA.

For the purposes of the RFA/SBREFA, Federal agencies are not considered small governments. As such, the Service, NRCS, and EPA are not considered further in this portion of the supplemental economic analysis. For the purposes of the RFA/SBREFA, State governments are not considered small government jurisdictions. As such, the State Department of Land and Natural Resources is not considered further in this portion of the supplemental economic analysis. The RFA/SBREFA defines “small organization” as any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. While this definition leaves some room for interpretation, TNC is the Hawai‘i chapter of a national organization that can be considered dominant in its field of habitat conservation and management. Thus, it is not likely to be considered a “small organization.”

Based on the analysis above, implementation of the Act’s section 7 provisions for Kamakou Preserve, Pelekunu Preserve, and Mo‘omomi Preserve will not impact any “small entities,” and thus, critical habitat designation of these areas would not have a significant economic impact on a substantial number of small entities.

## REFERENCES

Anden Consulting. "Draft Economic Impact Analysis of Proposed Critical Habitat for Threatened and Endangered Plants on Moloka'i." U.S. Department of the Interior, Fish and Wildlife Service. August 2002.

Juvik, J. O. and S. P. Juvik. *Atlas of Hawai'i*, third edition. Honolulu, Hawai'i. 1998.

State of Hawai'i. Department of Land and Natural Resources, Division of Forestry and Wildlife. *Annual Report to the Twenty-Second Legislature State of Hawaii Regular Session of 2003: Relating to the Natural Area Reserves System and Natural Area Partnership Program*. Honolulu, Hawai'i. November 2002.

The Nature Conservancy. *Final Environmental Assessment for Kamakou Preserve Natural Area Partnership*. Honolulu, Hawai'i. February 5, 2000.

The Nature Conservancy. *Final Environmental Assessment for Mo'omomi Preserve Natural Area Partnership*. Honolulu, Hawai'i. February 5, 2000.

U.S. Department of the Interior, Fish and Wildlife Service. Unpublished maps and tables for Kamakou Preserve, Pelekunu Preserve, and Mo'omomi Preserve. February 2003.

Information was provided in communications with representatives of:

- U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office
- The Nature Conservancy